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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,967	08/01/2005	Peter C. Brazier	9223A	3137
25280	7590	02/02/2009		
Legal Department (M-495) P.O. Box 1926 Spartanburg, SC 29304			EXAMINER	
			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			02/02/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/516,967

**Applicant(s)**

BRAZIER ET AL.

**Examiner**

Cheryl Juska

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-27 and 31-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-27 and 31-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed November 18, 2008, has been entered. Claim 22 has been amended as requested. Claims 1-21 and 28-30 have been cancelled. Thus, the pending claims are 22-27 and 31-48.
2. Said amendment is sufficient to withdraw the 112, 2<sup>nd</sup> rejection of claim 22 as set forth in sections 5-7 of the last Office Action (Non-Final Rejection mailed 06/18/08).

### ***Double Patenting***

3. Claims 22-27 and 31-46 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 29-56 of copending Application No. 10/516,861 for the reasons of record. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.
4. The examiner notes applicant's willingness to file a terminal disclaimer upon indication of allowability (Amendment, page 7, 1<sup>st</sup> paragraph).

### ***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 22-27 and 31-44 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,968,631 issued to Kerr in view of US 6,896,964 issued to Kvesic as set forth in section 9 of the last Office Action.

The amendment to claim 22 has been made to overcome a 112, 2nd issue rather than to distinguish the present invention from the prior art. As such, said rejection stands for the reasons set forth in section 9 of the last Office Action.

7. Claims 45 and 46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,968,631 issued to Kerr in view of US 6,896,964 issued to Kvesic as applied to claim 22 above and in further view of WO 96/38298 issued to Burke as set forth in section 10 of the last Office Action.

8. Claims 47 and 48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,968,631 issued to Kerr in view of US 6,896,964 issued to Vedic as set forth in section 11 of the last Office Action.

#### ***Response to Arguments***

9. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive. Specifically, applicant mostly reiterates the arguments set forth in the response filed March 7, 2008. These arguments were addressed in detail in sections 12-15 of the last Office Action, and hence, will not be repeated here.

10. The only new argument presented by applicant with this amendment is with respect to applicant's claim to a priority date of June 13, 2002. In particular, applicant asserts "Figure 3 of the Applicants priority application shows voids (openings) between the crumbs of the backing."

(Amendment, page 8, 1<sup>st</sup> paragraph). As such, applicant believes they are entitled to the June 13, 2002 priority date for the subject matter of voids between the elastomer crumbs of the backing layer. The examiner respectfully disagrees. While the priority documents, GB 0308398 and GB 0305867, both describe reference number 7 of Figure 3 as voids which are partially or fully filled with binder, priority document, GB 0214103 having the desired date of June 13, 2002, merely describes reference number 7 of Figure 3 as binder. Since GB 0214103 does not disclose the concept of voids, applicant is denied the priority date of June 13, 2002 and the above rejection over Kvesic is maintained.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
13. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/*  
Primary Examiner  
Art Unit 1794